

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLEVELAND EVERHART,

Defendant-Appellant.

UNPUBLISHED

August 16, 2007

No. 270874

Wayne Circuit Court

LC No. 06-001155-01

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant was charged with first-degree home invasion, MCL 750.110a(2), felonious assault, MCL 750.82, malicious destruction of a building causing less than \$200 in damage, MCL 750.380(5), and malicious destruction of property causing more than \$200 but less than \$1,000 in damage, MCL 750.377a(1)(c)(i). Following a bench trial, defendant was convicted of all four charges. At sentencing, the trial court vacated the malicious destruction of a building and malicious destruction of property convictions, and sentenced defendant to 30 months to 20 years in prison for the first-degree home invasion conviction and two to four years in prison for the felonious assault conviction. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution failed to present legally sufficient evidence to show beyond a reasonable doubt that defendant committed a felonious assault and first-degree home invasion. We disagree. The Court reviews de novo challenges to the sufficiency of the evidence. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006); *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). When the sufficiency of the evidence is challenged, the Court reviews the evidence in a light most favorable to the prosecution to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

Defendant argues that the evidence presented was insufficient to prove the elements of felonious assault. “The elements of felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). An assault is “either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.” *People v Sanford*, 402 Mich 460, 479; 265 NW2d 1 (1978) (internal quotation omitted). Overt, threatening conduct designed to

put another in reasonable apprehension of an immediate battery is sufficient to establish an assault. *People v Reeves*, 458 Mich 236, 240-244; 580 NW2d 433 (1998).

Defendant forcefully and unlawfully entered the victim's, armed himself with a steak knife, and then approached the victim and followed her as she ran out of her house. This sequence of acts qualifies as overt, threatening conduct. "Merely displaying a knife implies a threat of violence[.]" *People v Pace*, 102 Mich App 522, 534; 302 NW2d 216 (1980).

Defendant argues intent is the main issue in this case. Defendant acknowledges that a reviewing court must draw all reasonable inferences and make credibility determinations in support of the verdict, but submits there is no evidence defendant specifically intended that the victim apprehend an immediate battery. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Defendant argues the trial court improperly inferred defendant's intent from the victim's reactions, rather than from defendant's conduct. This Court first observes that "specific intent is not an element of felonious assault. The prosecution need only show the general criminal intent to commit an unlawful act necessary for simple assault." *People v Johnson*, 407 Mich 196, 227; 284 NW2d 718 (1979). Intent may be inferred from all the facts and circumstances. *People v Hardrick*, 258 Mich App 238, 246; 671 NW2d 548 (2003). Because it is difficult to prove an actor's state of mind, minimal circumstantial evidence is sufficient. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). Here, defendant broke into the victim's house, armed himself with a knife, and then approached and followed the victim. A trier of fact could conclude that defendant's threatening conduct was designed to place the victim in apprehension of an immediate battery, notwithstanding his utterances to the contrary.

The last assault element under *Reeves* requires that defendant's overt conduct caused the victim to reasonably apprehend an immediate battery. Although the victim admits defendant never verbally threatened her, she said she fled the house at the sight of defendant holding a knife. The evidence sufficiently supported a finding that the victim apprehended an immediate battery, and her apprehension was reasonable, given the circumstances.

The prosecution established the remaining elements of felonious assault. MCL 750.82(1) includes knives in its list of dangerous weapons. The testimony is uncontested that defendant, after entering the home, armed himself with a steak knife, satisfying the second element of felonious assault. Regarding the third element, intent, felonious assault is merely "a simple assault aggravated by the use of a weapon." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). The prosecution need only show the general criminal intent to commit an unlawful act. *Johnson*, *supra* at 227. The circumstantial evidence in the instant case is sufficient to satisfy the intent element for assault, so it is sufficient to sustain the intent element for felonious assault as well. *Hardrick*, *supra* at 246; *McGhee*, *supra* at 623. Thus, this Court finds that the evidence adduced is sufficient to support defendant's felonious assault conviction.

Defendant also argues there was insufficient evidence presented to prove the elements of first-degree home invasion. First-degree home invasion is defined as follows:

[A] person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who . . . enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home

invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

[MCL 750.110a(2); *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004).]

Defendant, in his appellate brief, acknowledges the prosecution established that he entered the victim's dwelling without permission. Defendant contends, however, that there is insufficient evidence to show he intended to commit an assault when he entered the home. Even assuming this to be correct, defendant overlooks that first-degree home invasion may be established by showing that defendant committed an assault while present in or exiting the dwelling, if at any time when he was in or exiting the home, he was armed with a dangerous weapon or another person was lawfully present in the home. For the reasons stated above, the evidence was sufficient to support a conviction of felonious assault, which defendant committed while he was present in and exiting the victim's dwelling. Defendant armed himself with a knife, a dangerous weapon, while in the home. The victim was lawfully present in her home during these events. Thus, there was sufficient evidence to support the first-degree home invasion conviction.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly